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SENSITIVE

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SUBJECT: BRAZIL - 2004 SPECIAL 301 RESPONSE

Refs: A) State 29549 B) Sao Paulo 276 C) Rio de Janeiro 128
D) Brasilia 313 E) Brasilia 222 F) Brasilia 202 G) 2003 Sao
Paulo 2199 H) 2003 Brasilia 3868 I) 2003 Brasilia 3138 J) 2003
Brasilia 3122 K) 2003 Brasilia 2943 L) 2003 Sao Paulo 1186

SENSITIVE BUT UNCLASSIFIED, PROTECT ACCORDINGLY.

11. (SBU) Summary: Post recommends that Brazil remain on the Priority Watch List for the 2004 Special 301 Review. Despite several positive developments, including tougher penalties for copyright infractions and increased (but isolated) police action against copyright theft, the Lula administration has not yet developed a comprehensive national strategy for addressing the country's poor IPR enforcement, nor has it reduced the backlog of patent and trademark applications. Several signs suggest that substantial progress is in the offing, but to date there has been little concrete improvement in Brazil's enforcement record. Widespread recognition of the harm caused by IPR abuse to Brazilian artists, tax revenues, and technological progress/industrial development has increased, due in part to successful public awareness campaigns launched by both the private and public sectors. The federal government has incorporated intellectual property regime improvements in its 2004-2007 Pluriannual Plan, and the formation of a Commission of Parliamentary Inquiry (CPI) and a permanent Caucus (Frente Parlamentar) on the issue of piracy and tax evasion in Brazil's Congress has generated much positive momentum. Leaving unaltered Brazil's Special 301 status while recognizing the progress it has made would send the clear signal that its continued poor IPR enforcement is a significant bilateral concern, but not damage the efforts of those within Brazil who seek tangible improvement. End summary.

Copyright Piracy - Positive Strides But Piracy Still Rampant

12. (SBU) Several of the industry Special 301 submissions welcome the increased interest in piracy and tax evasion generated in the Brazilian Congress in 2003. The Chamber of Deputies' Piracy CPI and the spin-off permanent Caucus may well represent the best hope for national-level action to improve copyright enforcement. As IIPA's submission suggests, the CPI's final report due in June will include several private sector generated action proposals for the federal government that should substantially remedy the lack of concrete coordinated action against piracy. While the issue gains prominence, the crime continues unabated. Special piracy task forces or police units in some Brazilian states and municipalities have produced enforcement successes and worked cooperatively with the CPI to make some high-profile arrests (refs E, G, H, I, K). These encouraging but isolated foci of activity are not coordinated and exist despite the Administration's failure to formulate a national strategy.

13. (SBU) The administration's Inter-ministerial Committee to Fight Piracy (IMC) met 11 times during its first year under the leadership of former federal police official Clovis Monteiro da Silva, but was bogged down in the bureaucracy of transition to the new Lula administration for much of the first half of 2003. Residing in the Ministry of Justice, the IMC continues to disappoint most with its lack of vision in addressing the fight against piracy. One member of the committee told econoff recently that the IMC has lots of great ideas but no authority or resources to implement them. Monteiro notes that the IMC still suffers from insufficient funds to accomplish its mission, and some ambitious 2003 plans, such as a Mercosul IPR conference, had to be postponed.

14. (SBU) Ref B notes Brazil-based industry representatives' assessment of the IMC as largely ineffective, but several of the committee's actions in 2003 deserve mention. Monteiro is most proud of the IPR introductory training course now required at the federal police academy and hopes to duplicate the success of this program in all police training curricula (civil and military). The public awareness campaign initiated in 2003 with radio, billboards and isolated television spots in a few cities will be expanded nationwide to include anti-piracy movie trailers. Monteiro insists that the educating role of the IMC is significantly undervalued, and that in the long-term, this effort will reduce piracy. He admits that the IMC would gain

from improved self-promotion and publicity to inform the interested public of its activities and accomplishments. According to Monteiro, the Committee's role of coordinating action within the Federal government, including with the police and customs officials where true enforcement takes place, is difficult to appreciate, but he believes that the growing recognition of the scope of Brazil's piracy problem is due to the quiet, consistent work of the Committee. There wouldn't be a CPI on piracy if the IMC did not exist, he told econoff.

15. (SBU) The IMC and the Federal Police are developing a database of piracy actions that will be accessible by federal, state civil and military police. This effort entails modifying an existing crime database to include crimes related to piracy. The IMC has not yet finalized its 2004 action plan, which is to be included in the National Public Security Plan, but held its first meeting of the year on February 19. Monteiro plans to focus on widening the public awareness campaign and strengthening ties within Mercosul and with WIPO. The IMC will also be studying changes to the legislation that created the Committee to strengthen its powers and expand its jurisdiction. Contrasted with the CPI's warm and cooperative relationship with the private sector, the IMC appears to regard the industry associations with a certain suspicion, particularly concerning industry statistics on damages caused by piracy -- which the IMC maintains are not credible. The IMC is working on developing its own statistics and studying the economic impacts of the creation and theft of intellectual property. With the start of the CPI, the private sector's involvement with the IMC has waned, but the IMC invited private associations to participate in several 2003 meetings, according to Monteiro.

16. (SBU) In July 2003 President Lula signed a law amending the Brazilian criminal code with respect to copyright violations (ref L). The law increases the minimum penalty from one to two years' imprisonment, levies a fine and allows for improved seizure and destructions procedures for contraband. The law does not include increased sanctions for software infringement. The free software movement is building support within the GoB and throughout Brazil. GoB procurement regulations prohibit use of unlicensed software, according to Itamaraty officials, but no special decrees or directives exist to further encourage compliance with international standards of copyright protection.

Patents - Talk but Little Action

17. (SBU) As ref C illustrates, Brazil's difficulties in granting patents and trademarks continues to worsen, as INPI lacks much needed resources and the involvement of the Ministry of Health's Sanitary Vigilance Agency (ANVISA) in pharmaceutical patents become more pronounced. INPI's Patent Director estimates the current patent backlog at 50,000. PhRMA's estimate of 450,000 pending trademark applications strikes us as reasonable. The administration's industrial policy goals, focusing on improving the technological base of Brazilian industry with special emphasis on software and pharmaceutical industries, put INPI in the spotlight. The 2004-07 Pluriannual Plan fixes the objective of reducing processing time for patents from seven to four years and for trademarks from four to one year.

18. (SBU) There appears to be recognition within the administration that the INPI/ANVISA linkage with regard to patent approval for pharmaceutical products or processes has taken on negative dimensions, but no remedies have been proposed (refs C and F). INPI's staffing woes should be ameliorated somewhat this year with the addition of 108 positions now available to qualified civil servants, and officials from the Ministry of Development Industry and Foreign Trade (MDIC) expect a permanent President of INPI to be named shortly.

TRIPS Compliance and Related Issues

19. (SBU) Presidential Decree 4370/03 amends existing patent legislation regarding compulsory licensing in situations of national emergency or public interest. The GoB quickly instituted the measure after the August 30 WTO Access to Medicines Agreement while in the midst of price negotiations with several pharmaceutical companies regarding medicines for its world-renowned HIV/AIDS treatment program. The measure has not been invoked, and its TRIPS compliance is uncertain (ref J). Legislation pertaining to designs for integrated circuits (Bill 1787/96) remains pending in Congress; Itamaraty officials have repeatedly requested priority action on the bill, to no avail.

10. (SBU) Previous Brazilian legislation dealing with aspects of genetic "patrimony" or heritage related to biodiversity conservation, integrity of genetic patrimony and traditional knowledge was superseded by the issuance of Provisional Measure 2.186 of August 23, 2001, which together with Decree 3.945 of 2001 and subsequent regulations, subject access and transfer of genetic patrimony to the approval of the Genetic Heritage Management Council (GHMC) - a body composed of several ministries, academics, and

others which is directed by the Ministry of Environment -- and to the sharing of benefits in contractual terms and legally established conditions. New draft legislation on genetic patrimony, which would replace the Provisional Measure and subsequent regulations, is reportedly under consideration in the Brazilian Executive Branch, and could be introduced in the Brazilian Congress later this year.

Biotechnology

11. (SBU) In January 2004, Monsanto announced that it had reached an agreement with farmers from the Brazilian state of Rio Grande do Sul to receive remuneration for the use of Roundup Ready technology found in the company's soybean variety grown widely throughout the state. The GoB's position on biotechnology remains undecided, as the biotechnology bill is still under debate in Congress (ref D).

12. (SBU) Itamaraty confirms that the GOB has no plans to ratify the 1996 WIPO Copyright treaty or the WIPO Performances and Phonograms Treaty.

Recommendation

13. (SBU) Despite positive strides in some sectors, post believes that the continued lack of tangible improvements in IPR protection and enforcement as a whole in the last year manifestly precludes lowering Brazil's Special 301 status. However, we recognize a positive momentum that should bear fruit this year, with projects in the pipeline such as the CPI's final report and INPI's increased staffing. We concur with industry submissions that suggest that retaining Brazil as a Priority Watch List country will appropriately convey the importance of the issue in our bilateral relationship, and believe that this position would not unduly discourage the forces of positive change within Brazil. To ensure that we can use the announcement to promote further progress we request that, should Brazil's status be maintained, USTR's announcement clearly recognize the positive developments regarding IPR that did occur and the USG's desire to work collaboratively to produce tangible results in the coming year.

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